

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

PROMESA
Title III

Case No. 17 BK 3283-LTS
(Jointly Administered)

PROMESA
Title III

Case No. 17 BK 4780-LTS

**NOTICE OF CONSTITUTIONAL CHALLENGE
TO FEDERAL STATUTE BY UTIER**

Unión de Trabajadores de la Industria Eléctrica y Riego (“UTIER”), hereby provides notice under Federal Rule of Bankruptcy Procedure 9005.1² to the Court and the Attorney General of the United States that *Unión de Trabajadores de la Industria Eléctrica y Riego Inc.*’s *Objection to Proposed Confirmation Order*, Case:17-04780-LTS, ECF No. 3706 (“Objection”),

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

² Bankruptcy Rule 9005.1 made applicable to these proceedings by 48 U.S.C. §2170, incorporates by reference Federal Rule of Civil Procedure 5.1.

filed on June 12, 2023, calls into question the constitutionality of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA” or the “Act”), Pub. L. No. 114-187, 130 Stat. 549 (2016), on the grounds that it was imposed upon the People of Puerto Rico based on the infamous and racist *Insular Cases* which should be repealed as morally repugnant under the U.S. Constitution.

Notice of a constitutional challenge to a federal statute is required when “the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity.” Fed. R. Civ. P. 5.1(a). UTIER believes this Notice should be unnecessary because the parties to the Title III proceeding related to the instant *Objection* include the United States Trustee. See In re Perry Hollow Mgmt. Co., Inc., 297 F.3d 34, 38 (1st Cir. 2002) (“[T]he U.S. Trustee [is] an agency of the United States” who becomes a “‘party’ to a case ... where it has actively participated in the proceedings.”); Bell v. Thornburg, 473 F.3d 84, 88 (5th Cir. 2014) (“[T]he U.S. Trustee is an officer of the Department of Justice.”); In re Revco D.S., Inc., 898 F.2d 498, 499 (6th Cir. 1990) (“The United States trustee [is] an officer of the Executive branch”); In re Parvin, 538 B.R. 96, 100 n.2 (Bankr. W.D. Wash. 2015) (notice of constitutional challenge unnecessary under Bankruptcy Rule 9005.1 because “the [U.S. Trustee] is a party and is an arm of the United States Department of Justice” and thus “the Court need not certify the matter to the United States Attorney General”).

Because the Oversight Board has independent litigation authority, 48 U.S.C. § 2128(b), such that its views on the constitutional question may differ from those of the United States, and to avoid any possible dispute regarding the propriety of the procedures employed in connection with the proceedings, UTIER files this Notice in an abundance of caution and to ensure strict compliance with Bankruptcy Rule 9005.1. UTIER respectfully requests that, pursuant to 28 U.S.C. § 2403 and Bankruptcy Rule 9005.1, the Court enters the proposed order attached as **Exhibit A**.

In compliance with Bankruptcy Rule 9005.1, this Notice is being served upon the Attorney General of the United States via certified mail to:

Att’n: Hon. Jefferson B. Sessions, III
U.S. Department of Justice

950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

In Ponce, Puerto Rico, this 14th day of June, 2023.



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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:	PROMESA Title III
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>	Case No. 17 BK 3283-LTS (Jointly Administered)
	Debtors. ³
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO as representative of PUERTO RICO ELECTRIC POWER AUTHORITY, Debtor.	PROMESA Title III Case No. 17 BK 4780-LTS

ORDER CERTIFYING CONSTITUTIONAL CHALLENGE

Upon consideration of the *Unión de Trabajadores de la Industria Eléctrica y Riego Inc.*'s *Objection to Proposed Confirmation Order*, Case:17-04780-LTS, ECF No. 3706, and pursuant to 28 U.S.C. § 2403 and Federal Rule of Bankruptcy Procedure 9005.1, the Court hereby certifies to the Hon. Merrick B. Garland, Attorney General of the United States that:

³ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

1. On June 12, 2017, Unión de Trabajadores de la Industria Eléctrica y Riego (“UTIER”), filed the Objection, ECF No. 3706, which calls into question the constitutionality of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA” or the “Act”), Pub. L. No. 114-187, 130 Stat. 549 (2016) on the grounds of the illegality of the *Insular Cases*.

2. Because the United States and/or at least one of its agencies or officers are parties to the Title III case and were in fact served with the *Objection*, the United States shall respond to the *Objection*, if at all, within the timeline provided for under this Court’s *Sixteen Amended, Case Management and Administrative Procedures*, Case No. 17-03283-LTS, ECF No. 20190-1, and not pursuant to the timeline provided for by Bankruptcy Rule 9005.1.

SO ORDERED.

Dated: _____

San Juan, Puerto Rico

LAURA TAYLOR SWAIN
United States District Judge